



# SENATE BILL No. 640

May 12, 1993, Introduced by Senator GOUGEON and referred to the Committee on Corporations and Economic Development.

A bill to amend sections 5, 151, 171, and 174 of Act No. 319 of the Public Acts of 1969, entitled as amended "Banking code of 1969,"

section 5 as amended by Act No. 104 of the Public Acts of 1987, section 151 as amended by Act No. 12 of the Public Acts of 1991, and section 171 as amended by Act No. 200 of the Public Acts of 1988, being sections 487.305, 487.451, 487.471, and 487.474 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 5, 151, 171, and 174 of Act No. 319 of  
2 the Public Acts of 1969, section 5 as amended by Act No. 104 of  
3 the Public Acts of 1987, section 151 as amended by Act No. 12 of  
4 the Public Acts of 1991, and section 171 as amended by Act  
5 No. 200 of the Public Acts of 1988, being sections 487.305,

1 487.451, 487.471, and 487.474 of the Michigan Compiled Laws, are  
2 amended to read as follows:

3 Sec. 5. As used in this act:

4 (a) "Articles" means articles of incorporation, all amend-  
5 ments to articles of incorporation, and agreements of consolida-  
6 tion and merger.

7 (b) "Association" means an association as defined in section  
8 108 of the savings and loan act of 1980, Act No. 307 of the  
9 Public Acts of 1980, being section 491.108 of the Michigan  
10 Compiled Laws.

11 (c) "Affiliate" means any corporation, business trust, asso-  
12 ciation, or similar organization TO WHICH 1 OR ALL OF THE FOLLOW-  
13 ING APPLY:

14 (i) ~~Of which an~~ AN institution, directly or indirectly,  
15 owns or controls either a majority of ~~the~~ ITS voting shares or  
16 more than 50% of the number of shares voted for the election of  
17 its directors, trustees, or other persons exercising similar  
18 functions at the preceding election, or controls in any manner  
19 the election of a majority of its directors, trustees, or other  
20 persons exercising similar functions. ~~— or —~~

21 (ii) ~~Of which control~~ CONTROL OF THE ORGANIZATION is held,  
22 directly or indirectly, through stock ownership or in any other  
23 manner, by the shareholders of an institution who own or control  
24 either a majority of the shares of that institution or more than  
25 50% of the number of shares voted for the election of directors  
26 of that institution at the preceding election, or by trustees for  
27 the benefit of the shareholders of that institution. ~~— or —~~

1 (iii) ~~Of which a~~ A majority of its directors, trustees, or  
2 other persons exercising similar functions are directors of any 1  
3 institution. ~~, or~~

4 (iv) ~~Which owns~~ OWNS or controls, directly or indirectly,  
5 either a majority of the shares of capital stock of an institu-  
6 tion or more than 50% of the number of shares voted for the elec-  
7 tion of directors of an institution at the preceding election, or  
8 controls in any manner the election of a majority of the direc-  
9 tors of an institution, or for the benefit of whose shareholders  
10 or members all or substantially all the capital stock of an  
11 institution is held by trustees.

12 (d) "Bank" means a state banking corporation organized or  
13 reorganized under the provisions of this act or organized under  
14 the provisions of any law of this state enacted before August 20,  
15 1969.

16 (e) "Branch" means, EXCEPT AS OTHERWISE PROVIDED IN THIS  
17 SUBDIVISION, any branch bank, branch office, branch agency, addi-  
18 tional office, or any branch place of business at which deposits  
19 are received, checks paid, or money lent. The acceptance of  
20 deposits in furtherance of a school thrift or savings plan by an  
21 officer, employee, or agent of a bank at any school shall not be  
22 construed as the establishment or operation of a branch or branch  
23 facility if the school is located within the geographical area  
24 imposed by section 171 for the operation of a branch or branches  
25 by that bank. An electronic funds transfer facility ~~which~~ THAT  
26 is made available to 2 or more federal or state chartered  
27 financial institutions pursuant to a state statute which

1 regulates electronic funds transfer facilities is not a branch.

2 An additional office of a state agency is not a branch. An

3 international banking facility as defined in 12 C.F.R.

4 204.8(a)(1), as in effect December 31, 1982, is not a branch.

5 THE ACCEPTANCE OF DEPOSITS BY A MESSENGER SERVICE OR THE DELIVERY

6 BY A MESSENGER SERVICE OF ITEMS REPRESENTING DEPOSIT ACCOUNT

7 WITHDRAWALS OR OF LOAN PROCEEDS IS NOT THE ESTABLISHMENT OR OPER-

8 ATION OF A BRANCH.

9 (f) "Bureau" means the financial institutions bureau created  
10 by this act.

11 (g) "Capital" or "capital stock" means the amount of unim-  
12 paired common stock issued and outstanding, plus the amount of  
13 unimpaired preferred stock issued and outstanding.

14 (h) "Commissioner" means the commissioner of the financial  
15 institutions bureau.

16 (i) "Consolidate", "consolidated", "consolidating", and  
17 "consolidation" shall mean and include, respectively, consolidate  
18 or merge, consolidated or merged, consolidating or merging, and  
19 consolidation or merger.

20 (J) "DEPOSITORY INSTITUTION" MEANS A STATE OR NATIONAL  
21 CHARTERED BANK, A STATE OR FEDERAL CHARTERED SAVINGS AND LOAN  
22 ASSOCIATION, A STATE OR FEDERAL CHARTERED SAVINGS BANK, OR A  
23 STATE OR FEDERAL CHARTERED CREDIT UNION.

24 (K) ~~(j)~~ "Federal agency" means a foreign bank agency  
25 established and operating under section 4 of the international  
26 banking act of 1978, 12 U.S.C. 3102.

1 (I) ~~(k)~~ "Federal reserve act" means the federal reserve  
2 act, chapter 6, 38 Stat. 251.

3 (M) ~~(i)~~ "Foreign bank" means a legal entity organized  
4 under the laws of a foreign country, a territory of the United  
5 States, Puerto Rico, Guam, American Samoa, or the Virgin Islands,  
6 which engages in the business of banking and is not directly or  
7 indirectly owned or controlled by United States citizens or by a  
8 corporation organized under the laws of the United States.

9 Foreign bank includes foreign commercial banks, foreign merchant  
10 banks, and other foreign institutions that engage in banking  
11 activities usual in connection with the business of banking in  
12 the countries in which the foreign institutions are organized.

13 (N) ~~(m)~~ "Foreign bank agency" means an office or place of  
14 business of a foreign bank located in this state, established  
15 under this act or the international banking act of 1978, Public  
16 Law 95-369, 92 Stat. 607 at which deposits of citizens or resi-  
17 dents of the United States shall not be accepted.

18 (O) ~~(n)~~ "Foreign country" means a country other than the  
19 United States of America and includes a colony, dependency, or  
20 possession of a country other than the United States of America.

21 (P) ~~(o)~~ "Incorporator" means a signer of the original  
22 articles of incorporation.

23 (Q) ~~(p)~~ "Institution" means any bank, industrial bank,  
24 trust company, or safe and collateral deposit company operating  
25 or organized or reorganized under the provisions of this act or  
26 operating or organized under the provisions of any law of this  
27 state enacted before August 20, 1969.

1 (R) "MESSENGER SERVICE" MEANS A SERVICE SUCH AS A COURIER  
2 SERVICE OR AN ARMORED CAR SERVICE THAT IS USED BY A BANK TO PICK  
3 UP FROM OR DELIVER TO SPECIFIC CUSTOMERS OF 1 OR MORE DEPOSITORY  
4 INSTITUTIONS CASH, CURRENCY, OR OTHER ITEMS RELATING TO TRANSAC-  
5 TIONS BETWEEN A DEPOSITORY INSTITUTION AND ITS CUSTOMERS. THE  
6 SERVICE MAY BE OWNED AND OPERATED BY THE BANK, AN AFFILIATE OF  
7 THE BANK, OR A THIRD PARTY.

8 (S) ~~(S)~~ "Publication" and "published", wherever it is pro-  
9 vided in this act that any notice or statement shall be pub-  
10 lished, means publication in a newspaper printed in the English  
11 language and published and circulated in the county where the  
12 institution is located    or    if there is no newspaper pub-  
13 lished and circulated in the county where the institution is  
14 located    in any newspaper having general circulation in the  
15 county.

16 (T) ~~(T)~~ "Service corporation" means a corporation orga-  
17 nized under the laws of a state ~~which~~ THAT engages in activi-  
18 ties determined by the commissioner by order or rule to be inci-  
19 dental to the conduct of a banking business as provided in this  
20 act or activities ~~which~~ THAT further or facilitate the corpo-  
21 rate purposes of a bank, or ~~which~~ THAT furnishes services to a  
22 bank or subsidiaries of a bank    and the voting stock of which  
23 is owned directly or indirectly by 1 or more banks or national  
24 banking associations.

25 (U) ~~(S)~~ "Shareholder" means the registered owner of any  
26 share or shares of capital stock of an institution.

1 (V) ~~(t)~~ "State agency" means a foreign bank agency  
2 established and operating under chapter 3A.

3 Sec. 151. Subject to the limitations and restrictions con-  
4 tained in this act or in a bank's articles, the bank may engage  
5 in the business of banking and a business related or incidental  
6 to banking, and for that purpose, without specific mention  
7 thereof in its articles, a bank has the powers conferred by this  
8 act and the following additional corporate powers:

9 (1) To have a corporate seal, which may be altered at plea-  
10 sure, and to use the corporate seal by causing it, or a facsimile  
11 of it, to be impressed, affixed, or reproduced in any manner.

12 (2) To have succession in perpetuity or for a limited period  
13 of time, as fixed by its articles or until its affairs are  
14 finally wound up by liquidation, forfeiture, or dissolution ~~—~~  
15 as provided ~~in~~ BY this act.

16 (3) To make contracts.

17 (4) To sue and be sued, complain, and defend in its corpo-  
18 rate name as fully as a natural person.

19 (5) To elect or appoint directors who shall appoint from  
20 their members a president who shall perform duties as may be des-  
21 ignated by the board, and who shall serve as the chairperson of  
22 the board, unless the board designates another director to be  
23 chairperson in lieu of the president. The board shall appoint 1  
24 or more vice-presidents, a cashier, and other officers as the  
25 board considers necessary, who may or may not be members of the  
26 board, shall define their duties, shall dismiss the officers or

1 any of them at pleasure, and shall appoint other officers to fill  
2 their places.

3 (6) To make, alter, amend, and repeal bylaws not inconsis-  
4 tent with its articles or with law for the administration and  
5 regulation of the affairs of the bank.

6 (7) To have and exercise the powers and means appropriate to  
7 effect the purpose for which the bank is incorporated.

8 (8) To make contributions and donations for the public wel-  
9 fare or for religious, charitable, scientific, or educational  
10 purposes, and, in connection ~~therewith~~ WITH SUCH CONTRIBUTIONS  
11 AND DONATIONS, to establish and operate charitable trusts.

12 (9) To purchase, take, lease as lessee, or otherwise acquire  
13 ~~—~~ and to own, hold, and use, to sell, lease as lessor, mort-  
14 gage, pledge, grant a security interest in, convey, or otherwise  
15 dispose of real or personal property in connection with the exer-  
16 cise of a power granted in this act.

17 (10) To act as agent of the United States, or of an instru-  
18 mentality or agency of the United States, for the sale or issue  
19 of bonds, notes, or other obligations of the United States, or an  
20 instrumentality or agency of the United States ~~—~~ and ~~—~~ ~~in con-~~  
21 ~~nection therewith,~~ to take other action as ~~—~~ ~~in the opinion of~~  
22 ~~the board of directors,~~ may be necessary or proper to enable the  
23 bank to ~~so~~ act UNDER THIS SUBDIVISION.

24 (11) To become a member of the federal reserve system, to  
25 hold shares of stock in a federal reserve bank, to take all  
26 actions incident to maintenance of its membership, and to



1 exercise all powers, not inconsistent with the provisions of this  
2 act, conferred on member banks by the federal reserve act.

3 (12) To become an insured bank pursuant to the federal  
4 deposit insurance act, and to take actions incident to the main-  
5 tenance of an insured status under that act.

6 (13) To become a member of the federal home loan bank as  
7 defined in section 2 of the federal home loan bank act,  
8 chapter 522, 47 Stat. 725, and to exercise those powers conferred  
9 upon a federal home loan bank member by the federal home loan  
10 bank that are consistent with this act.

11 (14) To purchase the shares of stock of a small business  
12 investment company doing business in this state and licensed  
13 under, or established pursuant to, the federal small business  
14 investment act of 1958, Public Law 85-699, 72 Stat. 689, and to  
15 purchase shares of stock of a business and industrial development  
16 corporation established pursuant to the provisions of the  
17 Michigan BIDCO act, Act No. 89 of the Public Acts of 1986, being  
18 sections 487.1101 to 487.2001 of the Michigan Compiled Laws.

19 (15) To sell mortgage loans to the federal national mortgage  
20 association, or a successor of the association, and, in connec-  
21 tion with the association, to make payments of capital contribu-  
22 tions, required pursuant to law, in the nature of subscriptions  
23 for stock of the association or a successor of the association,  
24 to receive stock evidencing the capital contributions, and to  
25 hold or dispose of the stock.

26 (16) To conduct its business through subsidiaries, but a  
27 bank shall not acquire or hold for its own account shares of a

1 bank or bank holding company, unless the shares are acquired as  
2 provided in subdivision (19). The commissioner may promulgate  
3 rules as he or she considers necessary to effectuate this subdivi-  
4 sion and prevent evasions of this subdivision. For the purpose  
5 of this subdivision, subsidiary means a corporation of which at  
6 least 80% of the voting stock of the corporation is owned by  
7 state and national banks located in Michigan.

8 (17) To make application for and to obtain insurance of  
9 loans, but not to operate an insurance underwriting business.

10 (18) To give its bond in a proceeding in any court in which  
11 it is a party or upon an appeal in a proceeding, and to pledge  
12 assets as security for the bond.

13 (19) To acquire and hold, irrespective of any restriction or  
14 limitation of this act, property, or a security interest in prop-  
15 erty, as protection against loss on an evidence of indebtedness,  
16 on an agreement for the payment of money, or on an investment  
17 security previously acquired lawfully and in good faith, subject  
18 to both of the following:

19 (a) A determination by a majority vote of its directors, at  
20 least once each year, as to the advisability of retaining the  
21 property or security interest so acquired.

22 (b) Disposition within a period of 60 months after the date  
23 of acquisition, or a longer period as the commissioner may  
24 approve.

25 (20) To hold property lawfully held on August 20, 1969,  
26 subject to the inclusion of the property in any computation of a

1 limitation on the acquisition for holding of property of a like  
2 character under this act.

3 (21) To service loans for others and to receive a fee for  
4 the service.

5 (22) To purchase capital stock, bonds, debentures, or other  
6 obligations of a corporation created pursuant to the authority  
7 granted by sections 161 to 165, but subject to the limitations  
8 and conditions of those sections.

9 (23) To execute and deliver guarantees as may be incidental  
10 or usual in carrying on the business of a bank.

11 (24) To purchase, hold, and dispose of stock of the student  
12 loan marketing association established pursuant to section 439 of  
13 part B of title IV of the higher education act of 1965, Public  
14 Law 89-329, 20 U.S.C. 1807-2.

15 (25) To purchase open accounts, with or without recourse  
16 against the seller of an open account, which accounts need not  
17 represent an evidence of indebtedness, and including open  
18 accounts in connection with export transactions, when the  
19 accounts are protected by insurance such as that provided by the  
20 foreign credit insurance association and the export-import bank.

21 (26) To purchase for its own account shares of stock issued  
22 by an agricultural credit corporation or a corporation organized  
23 solely for the purpose of making loans to farmers and ranchers  
24 for agricultural purposes, including the breeding, raising, fat-  
25 tening or marketing of livestock. ~~However, unless~~ UNLESS a  
26 bank owns at least 80% of the stock of the corporation, the  
27 amount invested by the bank at any 1 time in the stock of the

1 corporation shall not exceed 20% of the unimpaired capital and  
2 surplus of the bank.

3 (27) To make, arrange, participate in, purchase, or sell  
4 loans or extensions of credit secured by liens or interests in  
5 real estate or leaseholds.

6 (28) To purchase and hold for its own account any class of  
7 voting securities of a bank organized and chartered pursuant to  
8 section 54 or the national bank act, chapter 106, 13 Stat. 99,  
9 and engaged exclusively in providing services to depository  
10 institutions or their officers, directors, and employees, or a  
11 bank holding company ~~which~~ THAT owns or controls a bank orga-  
12 nized and chartered pursuant to section 54 or the national bank  
13 act, chapter 106, 13 Stat. 99, if the stock of a bank holding  
14 company is owned exclusively, except to the extent directors'  
15 qualifying shares are required by law, by depository institu-  
16 tions, as defined in section 54, and if all subsidiaries of the  
17 company engage exclusively in serving depository institutions or  
18 their officers, directors, and employees. The amount of securi-  
19 ties of a bank or bank holding company held by an investing bank  
20 shall not exceed 20% of the capital and surplus of the investing  
21 bank.

22 (29) To purchase, hold, and dispose of mortgages, obliga-  
23 tions, or other securities ~~which~~ THAT are or ever have been  
24 sold by the federal home loan mortgage corporation pursuant to  
25 sections 305 and 306 of title III of Public Law 91-351, 12  
26 U.S.C. 1454 and 1455.

1 (30) To incur liabilities, borrow money, and issue its  
2 notes, bonds, and other obligations.

3 (31) To exercise all incidental powers as shall be necessary  
4 to carry on the business of banking. In order to implement the  
5 provisions of this subdivision, the commissioner may promulgate  
6 rules pursuant to section 19, ~~to~~ issue declaratory rulings in  
7 accordance with the administrative procedures act of 1969, Act  
8 No. 306 of the Public Acts of 1969, being sections 24.201 to  
9 24.328 of the Michigan Compiled Laws, ~~to~~ or issue orders on  
10 applications by 1 or more banks to exercise powers not specifi-  
11 cally authorized by this act. It is intended that this subdivi-  
12 sion shall vest in the commissioner the discretion and authority  
13 to authorize banks to exercise the powers appropriate and neces-  
14 sary to compete with other depository financial institutions and  
15 other providers of financial services. In the exercise of the  
16 discretion permitted by this subdivision the commissioner shall  
17 consider the ability of banks to exercise any additional power in  
18 a safe and sound manner, the authority of national banks operat-  
19 ing pursuant to federal law or regulation, the powers of other  
20 competing entities providing financial services in the banks'  
21 service area, and any specific limitations on bank powers con-  
22 tained in this act or in any other state law. On a quarterly  
23 basis, the commissioner shall give notice to all banks of rules  
24 promulgated or declaratory rulings or determinations issued pur-  
25 suant to this subdivision.

26 (32) TO OWN AND OPERATE A MESSENGER SERVICE OR TO OWN OR  
27 INVEST IN A CORPORATION THAT OPERATES A MESSENGER SERVICE.

1       Sec. 171. (1) With the written approval of the  
2 commissioner, a bank may establish and operate a branch or  
3 branches within this state. The commissioner shall not grant  
4 approval unless the commissioner is satisfied as to the suffi-  
5 ciency of the capital and surplus of the bank and the prospects  
6 of successful operation if established.

7       (2) With the written approval of the commissioner, a bank  
8 may establish and operate a branch or branches within the limits  
9 of the city or incorporated village in which the bank is located  
10 if the commissioner is satisfied as to the prospects of success-  
11 ful operation if established.

12       (3) ~~A branch of any bank shall not be moved from 1 location~~  
13 ~~to another without the written approval of the commissioner.~~ A  
14 BANK MAY MOVE A BRANCH FROM 1 LOCATION TO ANOTHER IF IT GIVES THE  
15 COMMISSIONER WRITTEN NOTICE OF THE CHANGE IN LOCATION BEFORE IT  
16 OCCURS. IF THE BRANCH IS OF THE TYPE THAT REGULARLY MOVES FROM 1  
17 LOCATION TO ANOTHER, THE BANK SHALL FILE WITH THE COMMISSIONER A  
18 SCHEDULE SHOWING THE DATES AND TIMES WHEN THE BRANCH WILL BE OPEN  
19 FOR BUSINESS AT EACH LOCATION. A BANK MAY AT ANY TIME FILE WITH  
20 THE COMMISSIONER A NEW OR AMENDED SCHEDULE. A BANK SHALL OPERATE  
21 THE BRANCH IN ACCORDANCE WITH THE SCHEDULE ON FILE WITH THE COM-  
22 MISSIONER, EXCEPT THAT THE OPERATION OF THE BRANCH MAY DEVIATE  
23 FROM THE SCHEDULE NOT MORE THAN 25 DAYS DURING ANY CALENDAR  
24 YEAR. THE BANK SHALL KEEP A RECORD OF THE DATE AND TIMES WHEN  
25 THE BRANCH IS OPEN AT EACH LOCATION.

1 (4) With the written approval of the commissioner, a bank  
2 may contract with another bank or banks to act as a branch to  
3 provide services to the customers of the contracting bank.

4 (5) Subject to the requirements, limitations, and restric-  
5 tions of subsections (1) to (3), a state agency established and  
6 operating pursuant to chapter 3A may establish and operate addi-  
7 tional offices in this state.

8 Sec. 174. Whenever any bank permanently discontinues the  
9 operations of any branch or branch facility, all bills, checks  
10 and notes otherwise presentable for acceptance or payment, all  
11 deposits to be made or withdrawn, all notices to stop payment of  
12 checks to be given and similar functions, shall be deemed trans-  
13 ferable to, and treated as a part of, the business of the ~~main~~  
14 PRINCIPAL office of the ~~parent~~ bank. ~~Notice of the date upon~~  
15 ~~which such bank shall discontinue operations shall be posted con-~~  
16 ~~spicuously and continuously in the office lobbies of both the~~  
17 ~~branch facility or branch to be discontinued and parent bank at~~  
18 ~~least 14 days prior to discontinuance.~~